(21) H.F.R.

HIGH COURT OF CHHATTISGARH AT BILASPUR

Criminal Death Reference No.1 of 2007

(Made by the 2nd Additional Sessions Judge, Durg, under Section 366 (1) of the Code of Criminal Procedure)

Criminal Appeal No.516 of 2007

APPELLANT:

Balram Sharma

-Versus-

RESPONDENT:

State of Chhattisgarh

JUDGMENT FOR CONSIDERATION

HON'BLE MR. JUSTICE SUNIL KUMAR SINHA

Sd/-
L.C. Bhadoo
Judge

Sd/-
SUNIL KUMAR SINHA
Judge

POST FOR PRONOUNCEMENT OF JUDGMENT ON 22nd AUGUST, 2007

Sd/-
21-8-2007

(22)

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Death Reference No.1 of 2007

(Made by the 2nd Additional Sessions Judge, Durg, under Section 366 (1) of the Code of Criminal Procedure)

Criminal Appeal No.516 of 2007

APPELLANT: Balram Sharma, S/o Shri Uchit Sharma, aged about 36 years, R/o Qtr. No.504/D, Zone-1, Railway Colony, BMY – Charoda, G.R.P. Bhilai –3, Police Chowki, Charoda, District Durg (Chhattisgarh)

-Versus-

RESPONDENT: State of Chhattisgarh, Through Station House Officer, G.R.P. Bhilai, Police Chowki Charoda, District Durg (Chhattisgarh)

Present: -

Shri Sandeep Shrivastava with
Shri Anand Verma, Advocates:
Shri V.C. Ottalwar, Amicus Curiae: — For the appellant.

Shri D.K. Gwalre, Addl. Public Prosecutor — For the State.

DIVISION BENCH*: -

HON'BLE SHRI L.C. BHADOO AND

HON'BLE SHRI SUNIL KUMAR SINHA, JJ.

JUDGMENT

(Delivered on 22nd August, 2007)

The following judgment of the Court was delivered by ***L.C. Bhadoo, J.***: -

1. Condemned prisoner Balram Sharma was tried by the 2nd Additional Sessions Judge, Durg, in S.T. No.14/2007 for commission of offence under Section 302 of the I.P.C. for committing the murders of his wife Shakuntala Sharma, sons Sonu @ Vineet Sharma & Monu @ Sumit Sharma. Learned 2nd Additional Sessions Judge by his judgment dated 7-5-2007 after holding the condemned prisoner guilty for commission of offence under Section 302

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of the I.P.C., for committing the murders of the above persons, sentenced him to death.

2. Criminal Appeal No.516 of 2007 has been filed by the condemned prisoner /appellant challenging legality & correctness of conviction and sentence imposed upon him by the 2nd Additional Sessions Judge, Durg vide judgment dated 7-5-2007. On the other hand, learned 2nd Additional Sessions Judge has made Criminal Death Reference No.1 of 2007 under Section 366 (1) of the Cr.P.C. to this Court for confirmation of the death sentence imposed by him on the condemned prisoner.

3. This judgment shall dispose of the aforesaid appeal filed by the condemned prisoner and the reference made by learned 2nd Additional Sessions Judge, Durg.

4. The case of the prosecution, in brief, is that condemned prisoner was residing in Railway Colony, Charoda along with his wife Shakuntala Sharma, minor sons Sonu @ Vineet Sharma & Monu @ Sumit Sharma, one daughter Ku. Shweta Sharma, nephew Chandan Sharma, father Udit Sharma. The condemned prisoner used to purchase grocery items from one Ramesh Agrawal. Certain amount was due against him, he was not in a position to pay the said amount. Ramesh was pressurizing him to pay the money. He was working as private civil contractor. But for the last few months he was without work, therefore, he was under mental strain. In the evening of 18-9-2006 on account of his financial problems, he planned to commit the murder of his family members and to commit suicide thereafter. In pursuance of that plan, in the morning of 19-9-2006, after laying his wife down on the ground he had intercourse with her, when he pressed the neck of his wife, she started writhing. In order to get herself released from the accused she had beaten fingers of right hand of her husband. When she attempted to raise cries, the accused attacked on her neck with sickle, as a

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result of which she sustained fatal cut injury on her neck, she died instantaneously. Thereafter, he took his sons Sonu @ Vineet Sharma & Monu @ Sumit Sharma, one by one to kitchen on the pretext to answer the call of nature. He cut their neck also by attacking with same sickle. When the turn of committing murder of his daughter Shweta and suicide by himself came, he could not pick up courage. When his nephew Chandan Sharma enquired about the wife and children of the accused, he replied that his wife is not well, therefore, she is sleeping, about children he replied that he has sent them with one Rajesh outside the house. After putting lock on the kitchen, the accused left the house in the afternoon at about 2.30 p.m.. At about 4 p.m. as tap water was coming out from kitchen, Shweta asked her cousin Chandan Sharma to close the tap. Key of the lock of kitchen door was hanging on the wall, therefore, he took that key. When he opened the lock of kitchen door to close the tap, he saw that bodies of Sonu @ Vineet Sharma & Monu @ Sumit Sharma were lying in injured condition on the floor of the kitchen in a pool of blood. Thereafter, he saw body of Shakuntala in the room. He informed Shweta and others. In the meantime, the accused himself went to the Government Railway Police Chowki, Charoda. He lodged the report Ex.P/32 narrating the sequence of offence committed by him. He also disclosed the place where he kept sickle, on which R.K. Sahu, Sub Inspector, registered FIR Ex.P/32 for commission of offence under Section 302 of the IPC. The accused also gave merg intimation Ex.P/33 in respect of death of Shakuntala Sharma, Ex.P/34 in respect of death of Sonu @ Vineet Sharma & Ex.P/35 in respect of death of Monu @ Sumit Sharma.

5. Sub Inspector left for scene of occurrence, after giving notice P/1 to the Panchas, prepared inquest Ex.P/2 on the body of Sonu @ Vineet Sharma, after giving notice Ex.P/3 to the Panchas, prepared inquest Ex.P/4 on the body of Monu @ Sumit Sharma, after giving notice Ex.P/7 to the Panchas,

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prepared inquest Ex.P/6 on the body of Shakuntala Sharma. While in the police custody, the accused gave memorandum Ex.P/8 regarding the place where he kept the sickle, in pursuance of that he got recovered sickle under Ex.P/9 from his house. Under Ex.P/10 the I.O. seized one petticoat, one bra (black colour), one Kathri (bedding prepared of old clothes), one panty and broken pieces of glass bangles of the deceased, all stained with blood. He also seized empty wrapper of NITOVIT-10 tablets and one newspaper under Ex.P/10. He also took samples of bloodstains from the place where bodies of the deceased persons were lying. The site plans Ex.P/13 & Ex.P/14 were prepared by I.O.

6. The body of Shakuntala Sharma was sent for postmortem examination to the District Hospital, Durg under Ex.P/36 where Dr. S.K. Fating conducted postmortem. He opined that cause of death was shock and haemorrhage due to extensive cut injuries to vessels, Trachea and throat. Death was homicidal in nature. He prepared the report Ex.P/15. The body of Sonu @ Vineet Sharma was sent for postmortem examination to the District Hospital, Durg under Ex.P/37 where Dr. S.K. Fating conducted the postmortem. He opined that cause of death was shock and haemorrhage due to extensive cut injuries to vessels, trachea & throat. Death was homicidal in nature. He prepared the report Ex.P/16. The body of Monu @ Sumit Sharma was also sent for postmortem examination to the District Hospital, Durg under Ex.P/38 where Dr. S.K. Fating conducted the postmortem. He opined that cause of death was shock and haemorrhage due to extensive cut injuries to vessels, Trachea & throat. Death was homicidal in nature. He prepared the report Ex.P/17. Since there were injuries on fingers of right hand of the accused, he was also sent under Ex.P/39 to the District Hospital, Durg for examination of injuries. Dr. B.N. Dewangan examined his injuries. He prepared report Ex.P/29. Sickle was also sent for examination. Dr. S.K. Fating after preparing sketch of the

sickle on Ex.P/18, gave his report Ex.P/19 mentioning therein that blood was present on the sickle. Other articles were also sent to him for examination. He gave reports Ex.P/20, Ex.P/21, Ex.P/22, Ex.P/23, Ex.P/24, Ex.P/25, Ex.P/26, Ex.P/27 & Ex.P/28. He opined that injuries found on the neck of the deceased persons could be caused by the sickle in question. These articles were sent for chemical examination to the FSL, Raipur under Ex.P/30. It appears that till the trial concluded, report was not received from the FSL.

7. After completion of the investigation, charge sheet was filed against the accused in the Court of Judicial Magistrate, 1st Class, Durg, who in turn committed the case to the Sessions Judge, Durg, from where learned Additional Sessions Judge received the case on transfer for trial.

8. The prosecution in order to establish the charge against the condemned prisoner examined 14 witnesses. Statement of the condemned prisoner was recorded under Section 313 Cr.P.C. in which he denied material appearing against him in the prosecution evidence. He stated that his 3 children and Chandan Sharma were sleeping in the TV room. He further stated that he has been falsely implicated in the crime. In fact, at 6.30 a.m. of 19-9-2006 he left for Raipur. He returned from there at about 1.45 p.m. He is innocent and has been falsely implicated in the crime.

9. Learned Additional Sessions Judge after hearing arguments of learned counsel for respective parties convicted and sentenced condemned prisoner as aforesaid.

10. We have heard Shri Sandeep Shrivastava, learned counsel for the condemned prisoner and Shri D.K. Gwalre, Additional Public Prosecutor for the State.

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11. Learned counsel for the condemned prisoner have not disputed homicidal death of Shakuntala Sharma, Sonu @ Vineet Sharma & Monu @ Sumit Sharma. Moreover, from the evidence of PW-1 Shweta Sharma, daughter of the condemned prisoner & PW-2 Chandan Sharma, nephew of the condemned prisoner, as also PW-9 Dr. S.K. Fating, who conducted postmortem on the bodies of Shakuntala Sharma, Sonu @ Vineet Sharma & Monu @ Sumit Sharma, who has categorically stated that there was incised wound on the neck of Shakuntala Sharma in the size of 17 x 5 cm deep up to the bone, which was on the right side of mandible, whole skin was cut, muscles, trachea, neuro vascular structure were cut, there were multiple abrasions below above injuries, there were incised wounds on the right & left thumb, on account of neck injury wind pipe was cut, all the injuries were ante mortem in nature, cause of death was shock and haemorrhage which was as a result of cut of major blood vessels & wind pipe, death was homicidal; he has further stated that he conducted postmortem on the body of Sonu, he noticed that (i) there was incised wound on anterior part of right side of neck, which as on the left side of mandible extending up to mastoid region in the size of 14 x 6 cm x bone deep, trachea was completely cut, Oesophagus was completely cut, neuro vascular structure along with muscles were cut, (ii) there was incised wound on the right side of neck in the size of 5 x 3 cm muscle deep, injuries were ante mortem in nature, cause of death was shock and haemorrhage, blood vessels of the neck were completely cut, death was homicidal in nature; he has further stated that he conducted postmortem on the body of Monu @ Sumit Sharma, he noticed that (i) there was incised wound on the upper part of the neck in the size of 16 x 7 cm extending up to cervical vertebra, trachea, wind pipe, Oesophagus, blood vessels were completely cut, there was another incised wound below injury no.(i) in the size of 11 x 1 cm x muscle deep, there was abrasion on the shoulder, there was abrasion on

the right cheek & right shoulder, cause of death was shock & haemorrhage on account of cutting of blood vessels & wind pipe, death was homicidal in nature. In view of the evidence of Shweta Sharma, Chandan Sharma and the medical evidence of PW-9 Dr. S.K. Fating, it is established that death of the deceased persons was homicidal in nature.

12. As far as complicity of the condemned prisoner in the crime in question is concerned, case rests on the circumstantial evidence. As per the settled law laid down by the Apex Court, where a case rests squarely on circumstantial evidence, the inference of guilt can be justified only when all the incriminating facts and circumstances are found to be incompatible with the innocence of the condemned prisoner or the guilt of any other person. {**Ashok Kumar Chatterjee V. State of M.P.**[1]} The circumstances from which an inference as to the guilt of the condemned prisoner is drawn have to be proved beyond reasonable doubt and have to be shown to be closely connected with the principal fact sought to be inferred from those circumstances.

13. In the matter of **C. Chenga Reddy and Ors. V. State of A.P.**[2], the Apex Court observed thus:-

> "In a case based on circumstantial evidence, the settled law is that the circumstances from which the conclusion of guilt is drawn should be fully proved and such circumstances must be conclusive in nature. Moreover, all the circumstances should be complete and there should be no gap left in the chain of evidence. Further the proved circumstances must be consistent only with the hypothesis of the guilt of the accused and totally inconsistent with his innocence....."

14. In **Hanumant Govind Nargundkar and Anr. V. State of Madhya Pradesh**[3], the Apex Court observed thus:-

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[1] AIR 1989 SC 1890
[2] (1996) 10 SCC 193

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> "It is well to remember that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should be in the first instance be fully established and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and tendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused."

15. In the matter of **Sharad Birdhichand Sarda V. State of Maharashtra**[4], the Apex Court while dealing with circumstantial evidence, held thus:-

> "Onus was on the prosecution to prove that the chain is complete and the infirmity of lacuna in prosecution cannot be cured by false defence or plea. The conditions precedent in the words of this Court, before conviction could be based on circumstantial evidence, must be fully established. They are:- (1) the circumstances from which the conclusion of guilt is to be drawn should be fully established. The circumstances concerned 'must' or 'should' and not 'may be' established. (2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty; (3) the circumstances should be of a conclusive nature and tendency; (4) they should exclude every possible hypothesis except the one to be proved; and (5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused."

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[3] AIR 1952 SC 343
[4] AIR 1984 SC 1622

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16. In the matter of **Dhananjoy Chatterjee vs. State of W.B.**[5] the Apex Court held that:

> "In a case based on circumstantial evidence, the circumstances from which the conclusion of guilt is to be drawn have not only to be fully established but also that all the circumstances so established should be of a conclusive nature and consistent only with the hypothesis of the guilt of the accused. Those circumstances should not be capable of being explained by any other hypothesis except the guilt of the accused and the chain of the evidence must be so complete as not to leave any reasonable ground for the belief consistent with the innocence of the accused. It needs no reminder that legally established circumstances and not merely indignation of the court can form the basis of conviction and the more serious the crime, the greater should be the care taken to scrutinize the evidence lest suspicion takes the place of proof."

17. In the present case, the prosecution has tried to establish the crime against the condemned prisoner based on the following circumstances:-

(i) that the condemned prisoner was indebted to Ramesh Agrawal (PW-8), as he used to purchase grocery items from him, he was not in a position to pay the amount, therefore, he was under mental strain, that forced him to indulge in such a heinous crime;

(ii) that PW-1 Shweta, daughter of the condemned prisoner , saw the condemned prisoner attacking Shakuntala by holding her hairs. She saw that the condemned prisoner took Sonu @ Vineet Sharma & Monu @ Sumit Sharma, one by one, out of the room on the pretext of taking them for attending call of nature;

(iii) that the condemned prisoner gave false explanation to PW-2 Chandan Sharma, his nephew, on enquiry by him, the condemned prisoner said that Shakuntala was sleeping on account of ill health, Sonu @ Vineet Sharma & Monu @ Sumit Sharma were sent with Rajesh.

[5] (1994) 2 SCC 220

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(iv) that the conduct of the condemned prisoner was that without disclosing anything to anybody after locking the kitchen he left the house,

(v) that sickle, weapon of offence, stained with blood was recovered at the instance of the condemned prisoner; and

(vi) that there were injuries on the fingers of the condemned prisoner.

18. In order to ascertain whether the prosecution has been able to establish complicity of the condemned prisoner in the crime in question based on the above circumstances, applying the principle laid down by the Apex Court in the aforesaid judgments, we shall proceed to scrutinize evidence available on record.

First circumstance:

19. PW-8 Rameshchand Agrawal has stated that he is doing the business of grocery items for the last 15 years. The condemned prisoner is known to him. His father is also known to him because he was serving the Railway. Earlier father of the condemned prisoner used to purchase grocery items from his shop. After his retirement, the condemned prisoner used to purchase grocery items from his shop. 2-3 days prior to the date of the incident the condemned prisoner came to his shop. About Rs.7300/- were due against the condemned prisoner. He said that he would pay the amount within 2-3 days. He used to purchase grocery items on loan from him. Amount of Rs.7300/- became due against him slowly slowly because he was not able to pay the money. His mother expired in the month of January, 2006, therefore, he purchased grocery items worth Rs.4500/-. As more amount was due against him, when he asked him many times to pay the money, he paid amount of Rs.2500/-. He was working as contractor in Raipur. In cross-examination, he has denied suggestion that he was pressurizing the condemned prisoner for payment of money.

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20. PW-4 Vinod Sharma, brother of the condemned prisoner, has stated that on 26th January, 2006 their mother expired, at that time, he gave Rs.2,000/- to the condemned prisoner to perform last rites of their mother. He was working as contractor. PW-2 Chandan Kumar Sharma, nephew of the condemned prisoner, has stated that he was residing with his uncle, who was working as contractor. He was working in garage & used to earn Rs.800/- per month, which he was giving to his uncle. He used to go on work in the morning at 9 a.m. and return in the night. On the fateful day his uncle asked him not to go for work. As they are going to raise loan, for that they will be going to Durg. PW-1 Shweta Sharma has also stated that her father was working as contractor. In the statement Ex.D/3 recorded under Section 164 Cr.P.C., Chandan Kumar Sharma has stated before the Additional Chief Judicial Magistrate that his uncle confessed that on account of indebtedness his uncle was under mental strain, therefore, he committed heinous crime. But in the Court evidence he has resiled from his statement.

21. PW-14 R.K. Sahu, sub inspector, has stated that condemned prisoner was working as private contractor. But for the last 2 months he was without work, therefore, he was facing financial problems. He used to purchase grocery items from Ramesh Agrawal on loan, but he was not able to pay the loan money to Ramesh Agrawal, therefore, he was under mental strain. On the fateful day, in the morning he consumed liquor, thereafter he had intercourse with his wife & committed the crime. Therefore, in view of the above evidence, it is proved that condemned prisoner was working as private civil contractor, for the last 2 months he was having no work, most of the time he used to reside at his residence, he was indebted to Ramesh Agrawal from whom he used to purchase grocery items on loan, but he was unable to pay the money to Ramesh Agrawal, therefore, he was under mental strain, as he was not able to earn money to manage day-to-day

family affairs. Even though his father used to give him his pension money & nephew Chandan Kumar Sharma also used to give Rs.800/-, which he used to earn from his work, it appears that PW-8 Rameshchand Agrawal out of fear has stated that he never pressurized condemned prisoner to pay the amount, but from his evidence, it is established that an amount of Rs.7300/- was due against condemned prisoner which he was not able to pay, therefore, definitely there was pressure on the mind of the condemned prisoner on account of his financial difficulties. From the material available on record, it is established that on account of financial hardship which he was facing, he was forced to indulge in such a heinous crime because there is no other material on record to infer that on account of any other circumstance the condemned prisoner was forced to indulge in such a heinous crime.

Second circumstance:

22. As far as this circumstance is concerned, PW-1 Shweta Sharma, daughter of the condemned prisoner, has stated that in the fateful night she along with her parents, brothers Sonu @ Vineet Sharma & Monu @ Sumit Sharma were sleeping in the bed room. When she woke up, she saw that her mother was not on the bed, but she was on the ground in front of the bed & her father was beating her by holding her with hairs. When her mother tried to raise cries, her father brought sickle & attacked her. Even though in the cross-examination this witness has stated that in fact, she did not see her father attacking with sickle. She has stated that seeing the incident she became frightened, therefore, she was not able to raise cries. Thereafter, her father covered the dead body of her mother with a blanket. She has further stated that when her brother Sonu woke up to answer the call of nature, her father took him out to answer the call of nature, he took him to the kitchen. Immediately, thereafter, her father took her other

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brother Monu to the same side & attacked him, thereafter closed the kitchen. When she enquired about her brothers from her father, he said that he has sent them with one uncle. When she enquired about her mother, her father said that she is sleeping. Her father left the house saying that he is going out in search of Sonu & Monu. Thereafter, her father did not return. When she saw tap water was coming out from the kitchen, she informed her cousin about the same. When her cousin opened the door of kitchen, he saw that Sonu & Monu were lying dead in injured condition. In cross-examination, she has categorically stated that when she woke up, she saw that her father was beating her mother by holding her with hairs. She did not see attacking her with sickle. She came to know about the death of her mother & brothers at about 4 p.m. Up to 2 p.m. her father was in the house. The evidence of this witness is unchallenged in cross-examination. There is no reason for this witness to give false evidence in order to implicate her own father in such a heinous crime. In cross-examination of this witness, defence has not been able to elicit any circumstance which discredit evidence of this witness. Shweta at the time of examination was 11 years of age, therefore, she was able to watch & understand everything. Learned counsel for accused Shri Shrivastava and Shri Ottalwar argued that in fact this witness had not witnessed the attack with sickle on Shakuntala as well as when she was sleeping in the room, therefore, there was no occasion for her to see that her father took her brothers in kitchen to attack them with sickle. To an extent, argument appears to be convincing, but fact remains that from her evidence, it is established that in the fateful night the deceased persons, her father (condemned prisoner) and she were sleeping in the same room, she saw that her father was beating her mother by holding her with hairs, she also saw her father taking Sonu & Monu out of the room. On enquiry by Chandan (PW-2) and by this witness, he said that Sonu & Monu had gone

with one uncle and Shakuntala is not well, therefore, she is sleeping. This false information was given by the condemned prisoner.

Third circumstance

23. As far as this circumstance is concerned, as per the evidence of PW-2 Chandan Kumar Sharma, nephew of the condemned prisoner, he was residing with condemned prisoner. On the fateful day, he did not see his aunt. He enquired from condemned prisoner about his aunt, condemned prisoner replied that she is not well, therefore, he has given her tablet that is why she is sleeping. He has further stated that at about 11 a.m. he again enquired from his uncle, he again said that she is sleeping. When up to 2 p.m. he did not see Sonu & Monu, he enquired from his uncle, he replied that they had gone outside with friend Rajesh, as Rajesh had taken them. He went in search of Sonu & Monu but he could not trace their whereabouts. When at about 4 p.m. he returned to his house, then Shweta informed him that tap water is coming out of the kitchen, door is locked, therefore, he took the key which was hanging on wall near the door & opened the door in order to close water tap. He saw that the dead bodies of Sonu @ Vineet Sharma & Monu @ Sumit Sharma were lying on the ground, their neck was cut, floor of the kitchen was full of blood, thereafter he closed the door of the kitchen & informed Ravi. At that time he did not see Shakuntala. The above evidence of Chandan Sharma, nephew of the condemned prisoner, who was residing with the condemned prisoner, establishes the fact that condemned prisoner gave false explanation to Chandan Sharma about the presence of Shakuntala Sharma, Sonu @ Vineet Sharma & Monu @ Sumit Sharma whereas, in fact, Shakuntala Sharma was lying dead in the bed room, Sonu @ Vineet Sharma & Monu @ Sumit Sharma were lying dead in the kitchen. Condemned prisoner deliberately gave false explanation to Chandan Sharma about the presence

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of these 3 victims. On the contrary, as per the provisions of Section 106 of the Indian Evidence Act, being house murder & condemned prisoner was in the house in the fateful night, during the day he was required to explain to Chandan Sharma & other family members about the circumstances in which 3 victims met with homicidal death because on account of his presence, this was within his special knowledge that how victims met with homicidal death. Therefore, this is an additional factor against condemned prisoner regarding his complicity in the heinous crime. In cross-examination of Chandan Sharma (PW-2) defence has not been able to elicit any circumstance which discredit evidence of this witness. Shweta and Chandan are closely related to condemned prisoner. Nothing has been brought on record in cross-examination that this witness had any animosity or bias against condemned prisoner to implicate him in a false case. This witness has narrated circumstances in a natural way, therefore, the trial Court has rightly placed reliance on the evidence of this witness.

Fourth circumstance:

24. As far as this circumstance is concerned, it is admitted position that 3 dead bodies were lying in the house i.e. dead body of Shakuntala Sharma, wife of the condemned prisoner, was lying in the bed room, there were fatal injuries on her neck caused with sickle, body was covered with blanket, similarly condemned prisoner took Sonu @ Vineet Sharma & Monu @ Sumit Sharma, sons, to kitchen which was seen by PW-1 Shweta, daughter of the condemned prisoner, he inflicted injuries with sickle on their neck, their dead bodies were lying in the kitchen, door of the kitchen was locked, condemned prisoner remained in the house up to 2 p.m. but he did not disclose to any family members regarding death of these 3 victims; moreover, on enquiry by Chandan Sharma regarding whereabouts of Shakuntala Sharma, Sonu @ Vineet Sharma & Monu @ Sumit Sharma, he

gave false explanation, if the condemned prisoner was not involved in this heinous crime, then there was no occasion for him to give false explanation. This subsequent conduct of the condemned prisoner is admissible under Section 8 of the Indian Evidence Act. The condemned prisoner in his statement under Section 313 Cr.P.C. has stated that on the fateful day he left the house at about 6.30 a.m. & went to Raipur for his work. He returned at about 1.45 p.m. only. This explanation of the condemned prisoner is false for the reason that PW-1 Shweta, daughter of the condemned prisoner and PW-2 Chandan Sharma, nephew of the condemned prisoner, have categorically stated in their evidence about presence of the condemned prisoner in the house till 2 p.m., defence has not been able to demolish the said evidence of these two witnesses through cross-examination or bringing any material on record, even he has not produced any evidence to establish that he was in Raipur. Therefore, this conduct of the condemned prisoner after commission of the crime also establishes complicity of the condemned prisoner in the crime in question.

Fifth circumstance:

25. As far as this circumstance is concerned, PW-14 R.K. Sahu, sub inspector, has stated that condemned prisoner himself came to the GRP Police Outpost, Charoda on 19-9-2006 & he informed the police. He said that he has kept bodies of 2 children and wife in the kitchen and bed room. He has kept weapon of offence sickle in the bed room. He has further said that on enquiry by Chandan he informed him that his aunt is not well & children have been sent with one Rajesh. He closed the kitchen. He gave report Ex.P/32. He also gave merg intimations Ex.P/33, Ex.P/34 & Ex.P/35. He has further stated that he went on the spot & prepared inquest on the bodies of Shakuntala Sharma, Sonu @ Vineet Sharma & Monu @ Sumit Sharma Exs.P/6, P/2 & P/4, respectively. He has further stated that while in

the police custody the condemned prisoner gave memorandum Ex.P/8 regarding the place where he kept sickle, weapon of offence, in pursuance of that sickle was seized under Ex.P/9 at the instance of condemned prisoner & same was stained with blood. PW-12 Pramod Sharma has stated that condemned prisoner came with police to his residence where he saw dead body of his wife and children in the bed room and kitchen. The police people were searching sickle which was lying below the bed, same was given to the police. Memorandum and seizure memo Exs.P/8 & P/9 bear his signatures. PW-9 Dr. S.K. Fating has stated that sickle & other articles were sent to him for examination. Sickle in question was examined by him. There were blood spots on the sickle. Injuries found on the bodies of Shakuntala Sharma, Sonu @ Vineet Sharma & Monu @ Sumit Sharma could be caused by the said sickle. His report is Exs.P/18 & P/19. In view of the above, it is established that weapon of offence sickle was seized at the instance of the condemned prisoner from his house, same was stained with blood which was seen not only by I.O. but also by Dr. Fating (PW-9). It is true that sickle in question was sent for examination to the Forensic Science Laboratory but no report has been received. There is no FSL or Serologist's report that the blood which was found on the sickle was human blood. But recovery of the sickle can be connected with the crime in question for the reason that it is not the only circumstance on the basis of which the condemned prisoner is sought to be connected with the crime in question. This is an additional circumstance. Doctor has categorically stated that injuries found on the dead bodies of the victim could be caused by the said sickle & he also saw blood on sickle, therefore, this circumstance i.e. recovery of sickle also connects the condemned prisoner with the crime in question.

26. The part of the condemned prisoner's statement made in the first information report Ex.P/32, memorandum & that he made confession before

the witnesses in the presence of police in the house regarding commission of murder is not admissible in evidence, as same is hit by Sections 25 & 26 of the Indian Evidence Act. As far as recovery of the sickle at the instance of the condemned prisoner on the basis of information given by him is concerned, same is admissible under Section 27 of the Evidence Act because discovery of fact can be received in evidence, same being admissible in evidence as per the provisions of Section 27 of the Evidence Act. Therefore, that part of the evidence can be used against the condemned prisoner, hence, the observation of the trial Court that the condemned prisoner made extra judicial confession is not admissible in evidence on account of Sections 25 & 26 of the Evidence Act. There is no independent evidence to show that condemned prisoner made extra judicial confession before any witness which was not made in the presence of the police. Therefore, extra judicial confession cannot be pressed into service in order to connect condemned prisoner with the crime in question.

Sixth circumstance:

27. As far as this circumstance is concerned, PW-10 Dr. B.N. Dewangan has stated that he examined injuries of the condemned prisoner. There was abrasion in the size of 1½ cm x ½ cm on the right index finger. There was abrasion in the size of 1cm x ½ cm on the same finger. These injuries were caused by hard and rough object. His report is Ex.P/29. When question was put to the condemned prisoner, in his statement under Section 313 Cr.P.C. he has stated that he sustained injuries on account of beating given by the police. There is nothing on record to show that police gave him beating. In fact, he himself went to the police station, lodged the report, disclosed everything. Therefore, there was no occasion for beating the condemned prisoner by the police, even investigating officer has not been cross-examined that he gave beating that is why condemned prisoner

sustained the injury on finger, as it has come on record that when condemned prisoner was pressing the neck of his wife Shakuntala Sharma, he was struggling with her, in order to get rid of from his clutches, his wife had bitten his fingers, thereafter, the accused brought sickle and inflicted fatal injuries on the neck. PW-1 Shweta has stated in her evidence that her father was beating her mother after holding her with hairs. Therefore, injury on the body of the condemned prisoner is also an additional factor regarding his complicity in the crime in question.

28. The condemned prisoner & victims were sleeping in the same room, in the night Shweta saw the condemned prisoner beating her mother, thereafter she saw condemned prisoner taking one by one Sonu & Monu outside the room, their bodies were found in the kitchen in injured condition, door of the kitchen was locked, key was hanging near the door, condemned prisoner gave false explanation on enquiry by PW-2 Chandan regarding presence of Shakuntala Sharma, Sonu @ Vineet Sharma & Monu @ Sumit Sharma, condemned prisoner did not disclose till 2 p.m. to anybody regarding the dead bodies lying in his house, thereafter, he himself went and lodged the matter to the police, sickle, weapon of offence, was recovered at the instance of the condemned prisoner from his house stained with blood, the doctor has opined that injuries found on the bodies of the victims could be caused by the sickle in question, injuries on the right index finger of the condemned prisoner were examined by Dr. Dewangan & he has not been able to give any plausible explanation about injuries, therefore, all these factors and circumstances establish complicity of the condemned prisoner in the crime in question, based on these circumstances, an irresistible conclusion can be drawn that the condemned prisoner was author of the crime in question, there is no possibility of involvement of any other third person in the crime in question.

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29. Learned counsel for the condemned prisoner argued that the condemned prisoner has been visited with extreme penalty of death, facts and circumstances of the case do not warrant extreme penalty because as per the settled law this is not a rarest of rare case which warrant extreme penalty of death. They further argued that condemned prisoner was under financial hardship, he was not having work for the last few months, he was indebted to Ramesh Agrawal from whom he used to purchase grocery items for daily need, he was not able to repay the amount for which Ramesh Agrawal was insisting, therefore, under mental stress condemned prisoner took extreme step & eliminated his own near and dear ones i.e. wife & 2 children. Condemned prisoner is not a person of criminal background. He is an ordinary citizen.

30. On the other hand, learned Additional Public Prosecutor for the State argued that the manner in which condemned prisoner eliminated 3 family members, the trial Court has rightly punished with extreme penalty.

31. The relevant law on the point is Section 354 (3) of the Criminal Procedure Code which lays down that "*when the conviction is for an offence punishable with death or, in the alternative, with imprisonment for life or imprisonment for a term of years, the judgment shall state the reasons for the sentence awarded, and, in the case of sentence of death, the special reasons for such sentence.*" This section has been interpreted by the Hon'ble Apex Court time and again in many cases and the general rule which has been laid down by the Hon'ble Apex Court is that 'life imprisonment' is rule and 'death penalty' is an exception i.e. the death penalty can be awarded in the exceptional cases only. The land mark judgment on this point is **Bachan Singh V. State of Punjab**[6] in which Hon'ble Apex Court after considering all the aspects and constitutional

980) 2 SCC 684

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validity of this provision laid down that (i) the extreme penalty of death should not be inflicted except in the gravest cases of extreme culpability (ii) before opting for the death penalty the circumstances of the 'offender' also required to be taken into consideration along with the circumstances of the 'crime' (iii) life imprisonment is the rule and death sentence is an exception. Death sentence must be imposed only when life imprisonment appears to be an altogether insufficient punishment having regard to the relevant circumstances of the crime (iv) a balance sheet of the aggravating and mitigating circumstances has to be drawn up and in doing so the mitigating circumstances has to be accorded full weightage and a just balance has to be struck between the aggravating and the mitigating circumstances before the option is exercised. This judgment was again considered in the case of **Machhi Singh and others V. State of Punjab**[7] in which the principle of rarest of rare case was again reiterated and it was held that the death sentence can only be inflicted in case where the murder was cold-blooded, calculated and gruesome multiple murders as a reprisal in a family feud and in which the collective conscience of the community is so shocked, that it will expect the holders of the judicial power center to inflict death penalty irrespective of their personal opinion as regards desirability or otherwise of retaining death penalty, death sentence can be awarded when the murder is committed in an extremely brutal, grotesque, diabolical, revolting or dastardly manner so as to arouse intense and extreme indignation of the community; when the murder is committed for a motive which evinces total depravity and meanness e.g. murder by hired assassin for money or reward, or cold blooded murder for gains of a person vis-à-vis whom the murderer is in a dominating position or in a position of trust or murder is committed in the course of betrayal of the motherland; when murder of a member of a Scheduled Caste or minority community etc. is committed not

for personal reasons but in circumstances which arouse social wrath or in cases of bride burning or dowry deaths or when whose murder is committed is an innocent child or a helpless woman or old or infirm person.

32. Again in the case of **Allauddin Mian and others V. State of Bihar**[8] Hon'ble Apex Court considered Section 354 (3) of Cr.P.C. and reiterated the principles laid down in earlier decisions and held that holding the reasons for award of the death sentence are mandatory. Sub-section (3) of Section 354 cast a heavy duty on the Court to explain its choice why such sentence is being awarded. The special reasons clause in that sub-section is a sufficient safeguard against arbitrary imposition of the extreme penalty and if the Court reached the conclusion that the criminal is a menace to the society and the sentence of life imprisonment would be altogether inadequate, the court should ordinarily impose the lesser punishment. Only in those exceptional cases in which the crime is so brutal, diabolical and revolting as to shock the collective conscience of the community, would it be permissible to award the death sentence.

33. This aspect was again considered by the Hon'ble Apex Court in the case of **State through Superintendent of Police, CBI/SIT V. Nalini & others**[9] and in the case of **Om Prakash V. State of Haryana**[10]. In that case a member of a Para Military Force had killed seven members of the family was not awarded extreme penalty for the reason that he had been labouring under the strain that he and the members of his family had been suffering due to injustice being meted out to them by the family of the deceased. It was considered to be mitigating circumstances in that case. In the case of **State of Punjab V. Gurmej Singh**[11] Hon'ble Apex Court again held that before awarding the death penalty the Court has to consider the motive of the

[8] (1989) 3 SCC 5
[9] 1999 (5) SCC 2
[10] 1999 (3) SCC
[11] 2002 (6) SCC

crime, manner of the assault, the impact of the crime on the society as a whole, the personality of the accused, the circumstances and facts of the case as to whether the crime committed is for satisfying any kind of lust, greed or in pursuance of any organized anti-social activity or by way of organized crime, drug trafficking or the like or the chances of inflicting the society with a similar criminal act that is to say vulnerability of the members of the society at the hands of the accused in future or commission of murder which may be shocking to the conscience.

34. In the matter of **Shivu and Anr. V. R.G., High Court of Karnataka & Anr.**[12] the Apex Court held that:

> "The principle of proportion between crime and punishment is a principle of just desert that serves as the foundation of every criminal sentence that is justifiable. As a principle of criminal justice it is hardly less familiar or less important than the principle that only the guilty ought to be punished. Indeed, the requirement that punishment not be disproportionately great, which is a corollary of just desert, is dictated by the same principles that does not allow punishment of the innocent for any punishment in excess of what is deserved for the criminal conduct is punishment without guilt."

35. The Apex Court in paras-25 & 26 further observed that:-

> "25.The criminal law adheres in general to the principle of proportionately in prescribing liability according to the culpability of each kind of criminal conduct. It ordinarily allows some significant discretion to the Judge in arriving at a sentence in each case, presumably to permit sentences that reflect more subtle considerations of culpability that are raised by the special facts of each case. Judges in essence affirm that punishment ought always to fit the crime; yet in practice sentences are determined largely by other considerations. Sometimes it is the correctional needs of the

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perpetrator that are offered to justify a sentence, sometimes the desirability of keeping him out of circulation, and sometimes even the tragic results of his crime. Inevitably these considerations cause a departure from just desert as the basis of punishment and create cases of apparent injustice that are serious and widespread."

26. Proportoin between crime and punishment is a goal respected in principle, and in spite of errant notions, it remains a strong influence in the determination of sentences. Anything less than a penalty of greatest severity for any serious crime is thought to be a measure of toleration that is unwarranted and unwise. But in fact quite apart from those considerations that make punishment unjustifiable when it is out of proportion to the crime, uniformly disproportionate punishment has some very undesirable practical consequences."

36. Applying the above principle laid down by the Apex Court in the matters of **Bachan Singh & Machhi Singh and others** (Supra) as also the principle of proportion between crime and punishment is a principle of just desert, we are of the considered opinion that present case does not fall in the category of rarest of rare case looking to the exceptional and peculiar circumstances and facts of the present case, as the condemned prisoner was facing financial hardship, as he was not able to earn the money through his contractor work, therefore, he was facing financial hardship. He was indebted to Rameshchand Agrawal, who was pressurizing him to pay his amount, which he was not in a position to pay. The mitigating circumstances in favour of accused were that he was under mental strain which overpowered his sober common sense, under those circumstances, he took extreme step by committing murders of his near and dear family members. The condemned prisoner is not a person of criminal background but his family circumstances and financial hardship forced him to commit the crime. The only aggravating circumstance was that he has committed 3

murders of innocent persons of his own family, but that cannot be taken to be case of visiting him with extreme penalty. In the matter of **Om Prakash V. State of Haryana** (Supra) a member of Para Military Force had killed 7 members of the family was not awarded extreme penalty for the reason that he had been labouring under the strain that he and the members of his family had been suffering due to injustice being meted out to them. In the present case also, condemned prisoner was under mental strain, as he was not able to manage financial needs of his family, he was facing financial hardship, that forced him to take extreme step, in fact, that overpowered his sober common sense. Therefore, it is not a case where extreme penalty of death should be imposed on the condemned prisoner.

37. In the result, conviction of the condemned prisoner for commission of offence under Section 302 of the I.P.C. is maintained. However, sentence of death is set aside. In its place, we sentence the condemned prisoner to undergo imprisonment for life & to pay a fine of Rs.100/-, in default of payment of fine to further undergo S.I. for one month.

38. Thus the appeal of the accused/appellant is partly allowed to the extent indicated above and the reference for confirmation of death sentence is rejected.

Sd/-
L.C. Bhadoo
Judge

Sd/-
SUNIL KUMAR SINHA
Judge